

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

ROBIN DIRK HORDON, an individual

Plaintiff,

V.

KITSAP COUNTY SHERIFF GARY SIMPSON, in his personal and official capacity, KITSAP COUNTY, a municipal corporation KITSAP COUNTY SHERIFF'S OFFICE, a division of Kitsap County, a municipal corporation, DEPUTY MIKE MERRILL, an individual, DEPUTY ANDREW AMAN, an individual, DEPUTY BRAD TROUT, an individual, DEPUTY TONY GRAHAM, an individual, DEPUTY BENJAMIN TEETS, an individual, DEPUTY TIMOTHY YOUNG, an individual, DEPUTY JUSTIN CHILDS, an individual,

Defendants.

No. 3:20-cv-05464-RJB

SECOND AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff Robin Hordon files this Second Amended Complaint.

I. INTRODUCTION

1.1 This case arises out of the unlawful and unconstitutional arrest of a private citizen exercising his First Amendment rights to free speech. Responding to a call from officials from the Port of Kingston, three Kitsap County Sheriff's Deputies, Defendants Mike Merrill, Andrew Aman, and Brad Trout, arrested Plaintiff Robin Hordon, an activist who was engaged in political

1 free speech activities in “Mike Wallace Park,” a quintessential public forum, during the Port’s
 2 Fourth of July Celebration on July 4, 2019. The Deputies did so under standard operating
 3 procedure and policy of Kitsap County and its Sheriff’s Office, on the direction and advice of
 4 Deputy Prosecuting Attorney John Madden, and at the behest of the Port of Kingston Defendants
 5 for violation of their “sign policy,” which at the time purported to disallow any sign on Port
 6 property without prior permission of the Harbormaster.

7 1.2 Also in accordance with the policies of Kitsap County and its Sheriff’s Office,
 8 Deputy Trout then issued a “Criminal Trespass Warning” that purported to ban Mr. Hordon from
 9 the public park and other Port property “FOREVER/NO EXPIRATION.” The Trespass
 10 Warning does not provide notice of how this permanent ban can be appealed or challenged, and
 11 in fact there is no opportunity to be heard for individuals subjected to such Trespass Warnings to
 12 have such bans removed. Thus, such Trespass Warnings are issued under Kitsap County policy
 13 and authority at the unbridled discretion of an individual Sheriff’s Deputy.

14 1.3 After Deputy Trout booked Mr. Hordon, he set bail at \$50,000. This amount was
 15 excessive and forced Mr. Hordon to spend a night in the Kitsap County Jail. The next day, Mr.
 16 Hordon hired a private attorney to defend him against criminal charges. A judge released Mr.
 17 Hordon on July 5, 2019 on his own recognizance.

18 1.4 Several days later, on July 18, 2019, Mr. Hordon returned to Mike Wallace Park
 19 with his attorney for purposes of preparing his criminal defense. Port Officials called 9-1-1 to
 20 report a criminal trespass. Defendant Deputy Teets responded and spoke with Mr. Goff and
 21 Defendants Harbormaster Raymond Carpenter and Executive Director Greg Englin, who
 22 confirmed that they did not want Mr. Hordon in Mike Wallace Park. But by the time Deputy
 23 Teets arrived, Mr. Hordon and his lawyer had left.

24 1.5 Three days later, on July 21, 2019, Mr. Hordon returned to Mike Wallace Park to
 25 take some pictures for purposes of preparing his criminal defense. Again Marina Lead Austin
 26 Goff called 9-1-1, and again Deputy Teets responded to the park, this time with Defendant
 27 Deputy Justin Childs. By the time they arrived, Mr. Hordon was no longer in the park, but

1 Deputy Teets and Deputy Childs found him a few blocks away and arrested Mr. Hordon for
 2 "criminal trespass," assisted by Defendant Deputy Timothy Young. Deputy Teets then booked
 3 Mr. Hordon into the Kitsap County Jail on two counts of second-degree trespass and set bail at
 4 \$10,000. This amount was excessive and forced Mr. Hordon to spend another night in jail. The
 5 Deputies' sole ground for arresting Mr. Hordon was the prior Criminal Trespass Warning issued
 6 by Deputy Trout on July 4, 2019.

7 1.6 Kitsap County then prosecuted Mr. Hordon for two counts of criminal trespass,
 8 and the Sheriff has confirmed its effect in writing. Mr. Hordon has incurred legal fees in
 9 preparing his defense. His defense team filed a Motion to Dismiss on Monday, January 20,
 10 2020, arguing that Mr. Hordon was arrested in violation of the First Amendment. A few days
 11 later, prior to filing a response to the Motion, a Kitsap County Deputy Prosecuting Attorney
 12 voluntarily dismissed the case without prejudice. Kitsap County could decide to prosecute Mr.
 13 Hordon for those same charges any time during the applicable statute of limitations. So not only
 14 was Mr. Hordon banned from Mike Wallace Park "FOREVER," he lives in fear of being
 15 prosecuted any day, at the whim of Kitsap County.

16 1.7 The acts described above and in greater detail below violate the First, Fourth,
 17 Eighth, and Fourteenth Amendments to the United States Constitution. All defendants have
 18 violated and suppressed Mr. Hordon's First Amendment right to free speech.

19 II. PARTIES

20 2.1 Plaintiff ROBIN DIRK HORDON is an individual residing in Kitsap County in
 21 the State of Washington.

22 2.2 Defendant KITSAP COUNTY SHERIFF GARY SIMPSON is an individual sued
 23 in his official capacity as the elected Sheriff of Kitsap County, and in his personal capacity. He
 24 resides in Kitsap County and at all times relevant was the Kitsap County Sheriff acting within the
 25 scope of his employment and under color of state law. Sheriff Simpson is a policymaker of
 26 Kitsap County with respect to the County's "Criminal Trespass Warning" policies and program
 27 as well as the policies and practices governing the setting of pre-arrainment bail.

1 2.3 Defendant KITSAP COUNTY is a municipal corporation formed under the laws
 2 of the State of Washington located in the Western District of Washington.

3 2.4 Defendant KITSAP COUNTY SHERIFF'S OFFICE is a subdivision of Kitsap
 4 County, a county within the State of Washington and a municipal corporation located in the
 5 Western District of Washington. References to Kitsap County in this complaint cross-refer to
 6 the Kitsap County Sheriff's Office, and vice-versa.

7 2.5 Defendant DEPUTY MIKE MERRILL is an individual who at all times relevant
 8 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
 9 color of state law.

10 2.6 Defendant DEPUTY ANDREW AMAN is an individual who at all times relevant
 11 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
 12 color of state law.

13 2.7 Defendant DEPUTY BRAD TROUT is an individual who at all times relevant
 14 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
 15 color of state law.

16 2.8 Defendant DEPUTY TONY GRAHAM is an individual who at all times relevant
 17 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
 18 color of state law.

19 2.9 Defendant DEPUTY BENJAMIN TEETS is an individual who at all times
 20 relevant was a Kitsap County Sheriff's Deputy acting within the scope of his employment and
 21 under color of state law.

22 2.10 Defendant DEPUTY TIMOTHY YOUNG is an individual who at all times
 23 relevant was a Kitsap County Sheriff's Deputy acting within the scope of his employment and
 24 under color of state law.

25 2.11 Defendant DEPUTY JUSTIN CHILDS is an individual who at all times relevant
 26 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
 27

1 color of state law.

2 2.12 Plaintiff originally sued the Port of Kingston, a municipal corporation formed
 3 under the laws of the State of Washington, and three of its officials, Harbormaster Raymond
 4 Carpenter, Executive Director Greg Englin, and Marina Lead Austin Goff. The Port of
 5 Kingston immediately revoked it's "signs policy," and the Port defendants soon reached a
 6 resolution with Plaintiff. The Port has since revised its "signs policy."

7 **III. JURISDICTION AND VENUE**

8 3.1 This Court has jurisdiction pursuant to 42 U.S.C. § 1983, as well as 28 U.S.C. §§
 9 1331 and 1343.

10 3.2 Venue is appropriate in the Western District of Washington pursuant to 28 U.S.C.
 11 § 1391 because at least some of the Defendants reside in this judicial district and because the
 12 events and omissions giving rise to the claims alleged here occurred within the Western District
 13 of Washington.

14 **IV. FACTUAL ALLEGATIONS**

15 4.1 The Port of Kingston is a "Port District" located in Kingston, Washington, an
 16 unincorporated community located in Kitsap County. A "Port District" is a municipal
 17 corporation created by State law "for the purposes of acquisition, construction, maintenance,
 18 operation, development and regulation within the district of harbor improvements, rail or motor
 19 vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and
 20 terminal facilities, or any combination of such transfer and terminal facilities, and other
 21 commercial transportation, transfer, handling, storage and terminal facilities, and industrial
 22 improvements." RCW 53.04.010(1).

23 4.2 Port Districts are fundamentally public entities voted into being by an election of
 24 the people who live in the district. RCW 53.04.020. They are vested with governmental
 25 authority with the power to, among other things, acquire property by purchase or condemnation
 26 (RCW 53.08.010), raise revenues through bonds or special assessments (RCW 53.08.050),
 27 operate moorage facilities (RCW 53.08.310), establish rates and charges (RCW 53.08.070), and

1 promulgate “regulations for the use by tenants, agents, servants, licensees, invitees, suppliers,
 2 passengers, customers, shippers, business visitors, and members of the general public of any
 3 properties or facilities owned or operated by it,” (RCW 53.08.220). Port Districts are governed
 4 by Port Commissioners, who are publicly elected officials. RCW 53.12.

5 4.3 The Port of Kingston is currently one of 12 Port Districts in the State of
 6 Washington, encompassing 17 square miles of land at the northeastern end of the Kitsap
 7 Peninsula. The Port leases a significant portion of this land to the Washington State Ferry
 8 System to operate a car and passenger ferry between Kingston and Edmonds.

9 4.4 Near the ferry dock exists “Mike Wallace Park,” a public park created in about
 10 1997 when the Port converted an old boatyard and repair facility into a park with public
 11 restrooms, picnic tables, and a covered stage. According to the Port’s Comprehensive Plan of
 12 Harbor Improvements, Mike Wallace Park is “home to most of Kingston’s large, outdoor
 13 community events, including the Farmers Market, Concerts in the Cove, the Fourth of July
 14 Celebration in the summer, and Kingston Cove Christmas.”

15 4.5 The Port of Kingston has a set of published “Rules and Regulations,” which are
 16 available on its website. <https://portofkingston.org/wp-content/uploads/2019/02/Rules-and-Regulations-FINAL-updated-Nov.-28-2018.pdf> Those Rules and Regulations purport to govern
 17 all manner of conduct on “Port property” and at “Port facilities,” including the “post[ing]” of
 18 signs. At the time this lawsuit was originally filed, the Rules stated that “Signs may be posted in
 19 designated Port areas only after receiving the Harbormaster’s approval.” What constitutes a
 20 “sign” or a “post[ing]” was not defined, and there were no criteria by which the Harbormaster
 21 considered whether such a posting may be approved. That approval was entirely within the
 22 discretion of the Harbormaster. The Port’s Rules and Regulations did not otherwise mention or
 23 directly govern free speech activities, demonstrations, gatherings, or protests.

25 4.6 The “Kingston 4th of July Celebration” takes place in Mike Wallace Park each
 26 year on July 4, touting itself as the “longest continuously running 4th of July celebration West of
 27 the Mississippi.” The Celebration is planned and operated by the “Kingston Fourth of July

1 Celebration” corporation, a Washington non-profit organization. The Celebration features a
 2 parade, a “fun zone” for kids, a music festival, a fun run, and evening fireworks. The
 3 Celebration occupies a large area of Kingston, including Mike Wallace Park and the area around
 4 the Kingston Village Green Community Center. It is open to the public and does not require an
 5 entrance fee.

6 4.7 Plaintiff Robin Hordon is a life-long peaceful civil activist. In 2001-2002, while
 7 living in Reno, Nevada, Mr. Hordon participated in the Reno Anti War Coalition (RAWC) where
 8 he developed the concept of “Civil Informationing,” which sought to remedy some of the
 9 weaknesses of “protests” and marches. Civil Informationing involves public display of peaceful
 10 and thought-provoking messages with the goal of engaging members of the public in civil
 11 discourse about discrete topics. Mr. Hordon’s displays are typically free-standing signs with a
 12 base, and measure between 5-8 feet high and 2-3 feet wide, with some signs attached together for
 13 a total width of 5-10 feet. His displays have typically focused on the topics of women’s rights,
 14 Native American rights and values, healthcare as a human right, environmental preservation and
 15 conservation, anti-war, voting and democracy, and the expansion of democratic socialism. Mr.
 16 Hordon and his signs are well known to many, including Kitsap County Deputies. He drives a
 17 distinctive blue van that is known to the community and Kitsap County Deputies.

18 4.8 Mr. Hordon has practiced Civil Informationing in cities throughout the country
 19 and has done so all around the Puget Sound region for over a decade, including over 40 times at
 20 Mike Wallace Park in Kingston. Over the years, Mr. Hordon has found this method of activism
 21 to be both effective and rewarding, as it builds bridges and provokes dialogue rather than
 22 fomenting conflict. To be effective, Mr. Hordon seeks out public events and gatherings of people
 23 who are on their own time, such as at parades, holiday events, fairs, or musical shows.

24 4.9 In that vein, Mr. Hordon sought to engage in Civil Informationing on July 4,
 25 2019, at Kingston’s annual Fourth of July Celebration event. As he had done in prior years, he
 26 displayed five large display signs along the parade route that were designed to provoke thought
 27 and civil discourse. This day, Mr. Hordon had chosen signs that said “Green Peace – Yes to

1 Both," "Save Earth," "Elect Matrilineal Governances," and "VOTE – Save Democracy."

2 4.10 That afternoon, after the parade, Mr. Hordon moved his displays to Mike Wallace
 3 Park, where the crowds from the parade route and other events had migrated to listen to music
 4 and wait for the evening's fireworks display. He transported them in his van and parked near the
 5 stage while he unloaded three of them.

6 4.11 As he was setting up the display signs off to the side of the stage, he was
 7 approached by two Port officials, who told him to remove the display.

8 4.12 No park visitors or members of the public had complained about the display signs.
 9 The signs were not blocking the view of the stage and were not interfering with pedestrian
 10 traffic.

11 4.13 Harbormaster Carpenter showed him the "Signs" Rule that purported to give him,
 12 the Harbormaster, the discretion to decide what signs he would approve. Mr. Hordon refused to
 13 remove the signs.

14 4.14 Harbormaster Carpenter accused Mr. Hordon of using profanity and smelling of
 15 alcohol. But, Harbormaster Carpenter did not tell Mr. Hordon to stop using profanity or to stop
 16 smelling like alcohol; rather, he was concerned with Mr. Hordon's signs.

17 4.15 Rather than simply allow Mr. Hordon to carry on peacefully displaying his signs
 18 and engaging in civil discourse on matters of public concern, Harbormaster Carpenter decided to
 19 call the police to forcibly remove Mr. Hordon and his signs from Mike Wallace Park.

20 4.16 At about 5:25 pm, Defendants Deputy Merrill and Deputy Trout arrived at Mike
 21 Wallace Park and spoke with Defendants Harbormaster Carpenter and Marina Lead Austin Goff.
 22 The two Port officials showed the Deputies the Rule that required prior approval of the
 23 Harbormaster prior to "posting" signs in the park.

24 4.17 With this Rule in hand, the Deputies approached Mr. Hordon and told him that the
 25 Port officials were requiring him to remove his display signs. The Deputies showed him the
 26 Rule. Mr. Hordon responded in a loud voice because he wanted witnesses to the conversation
 27 with the police, firmly refusing to remove his display signs and telling the police that he had a

1 legal right to engage in speech and display his signs and banner in a public forum.

2 4.18 Shortly after 5:35, Defendant Deputy Aman arrived at the stage to assist in the
 3 police action against Mr. Hordon. According to his report, he noted that Mr. Hordon had
 4 “several signs displayed along the walk way [sic] that people were using.”

5 4.19 According to Deputy Aman’s report, Defendant Deputy Tony Graham arrived on
 6 the scene at about this time. Deputy Graham then participated in the subsequent events
 7 described below, aided and abetted constitutional harms, and failed to prevent constitutional
 8 harms.

9 4.20 Defendant Deputy Tony Graham arrived on the scene at about this time,
 10 participated in the subsequent events, and failed to prevent constitutional harms.

11 4.21 Deputy Aman’s report contains no allegation that he witnessed Mr. Hordon do
 12 anything disruptive or illegal. He then allowed Deputy Trout to use his department-issued cell
 13 phone to take pictures of Mr. Hordon’s signs. Deputy Aman later sent the pictures to the
 14 prosecutor’s office to assist in the prosecution of Mr. Hordon for displaying his signs in the park.

15 4.22 Defendant Deputy Merrill claimed to have then consulted with Kitsap County
 16 Deputy Prosecuting Attorney John Madden. Deputy Merrill also claimed that Mr. Madden
 17 advised him that the police did have the “authority to ask Hordon to remove his signs,” and that
 18 “Obstruction” would be the “best charge” if Deputy Merrill decided to arrest Mr. Hordon for
 19 failing to do so.

20 4.23 This is corroborated by Deputy Aman, who stated in his report:

21 A short time later Sgt. Merrill advised the Prosecutor had indicated that if the
 22 subject was not willing to comply with the Port of Kingston rules he either needed
 23 to leave or could be arrested for Obstructing. We next spoke with the
 24 Harbormaster, Raymond Carpenter, who indicated he had not [sic] issue if Robin
 25 was willing to discuss with him where he could place his signs. He advised if
 Robin was not willing to follow the rules he had no problem with trespassing him
 from the property.

26 4.24 This shows that Deputies Aman, Graham, Merrill and Trout knew that the reason
 27 the Port was excluding Mr. Hordon from the park was because of his signs and his refusal to

1 move them to a place designated and blessed by Harbormaster Carpenter under the Port's "no
 2 signs" policy.

3 4.25 As officers of the law, Deputies Aman, Graham, Merrill and Trout are sworn to
 4 uphold and defend the Constitution of the United States, and are well-aware that citizens have a
 5 right to peacefully speak on matters of public concern in a public park. These deputies know,
 6 and the law was clear, that citizens cannot be removed or excluded from public parks simply for
 7 engaging in peaceful and non-disruptive free speech activities.

8 4.26 Despite this knowledge, and armed with the County proclaimed policy statement
 9 from Deputy Prosecuting Attorney Madden, Deputy Merrill, accompanied by the other deputies,
 10 informed Mr. Hordon that he could either move his signs to an area acceptable to the
 11 Harbormaster or remove the signs from the park entirely, and if he refused to do one of these two
 12 things, the police would arrest him for "Obstruction." More than once, Mr. Hordon asked what
 13 "arrested for obstruction" meant, as he wanted to know whether he was being accused of
 14 obstructing a police officer, or obstructing pedestrian traffic. He was doing neither, but Deputy
 15 Merrill did not clarify.

16 4.27 Mr. Hordon did not want to be relegated to a less visible part of the park and
 17 believed he had the right to be exactly where he was. So, he refused to either move or remove
 18 his signs.

19 4.28 Shortly after 6 pm, Deputies Merrill, Trout, Graham, and Aman arrested Mr.
 20 Hordon based solely on his refusal to remove his signs. They placed him in handcuffs and
 21 escorted him to Defendant Deputy Trout's patrol vehicle for transport to the jail. They searched
 22 Mr. Hordon's person and advised him of his Fifth and Sixth Amendment rights, the so-called
 23 "Miranda rights." Defendant Deputy Trout then drove Mr. Hordon to the Kitsap County jail and
 24 booked him for "Obstruction," now making clear that the reason for arrest was obstruction of a
 25 police officer, and set bail at \$50,000.

26 4.29 By arresting Mr. Hordon, Deputies Merrill, Trout, Graham, and Aman violated
 27 the First and Fourth Amendment to the United States Constitution by preventing Mr. Hordon

1 from engaging in peaceful and non-disruptive free speech activities in a public park.

2 4.30 Arresting a person for failure to stop engaging in peaceful and non-disruptive free
3 speech activities in a public park would chill a person of ordinary firmness from future free
4 speech activity, and has chilled Mr. Hordon from engaging in free speech activity at Mike
5 Wallace Park.

6 4.31 The directive to Mr. Hordon that he had to remove his signs or be arrested--
7 vocalized by Deputy Merrill and supported and effectuated by Deputies Trout, Aman, and
8 Graham--was not a lawful one. Therefore, there was no probable cause to arrest Mr. Hordon for
9 "Obstructing" for failure to follow that directive.

10 4.32 Similarly, because people have a right to engage in peaceful and non-disruptive
11 free speech activities in public parks, the Harbormaster's "trespass" action excluding Mr. Hordon
12 from the park was also unlawful and unconstitutional. Therefore, there was no probable cause to
13 arrest Mr. Hordon for "Trespass."

14 4.33 For the first time in his life, at age 71, Mr. Hordon spent a night in jail. The
15 experience was unpleasant, and Mr. Hordon suffered emotional trauma and distress from the
16 experience. Kitsap County then pressed Trespass charges against Mr. Hordon, who was forced
17 to hire a criminal defense attorney to defend him. He was arraigned the next day and released on
18 his own recognizance.

19 4.34 The same day of the arrest, at "1900" hours (7 pm), Officer Trout issued a
20 "Criminal Trespass Warning" that purported to ban Mr. Hordon from entering Mike Wallace
21 Park and other Port property "FOREVER/NO EXPIRATION" for the stated reasons of "public
22 intoxication," "disturbing the peace," and "threatening Port of Kingston employees." *See*
23 Exhibit 1, attached.

24 4.35 Kitsap County authorizes its deputies to set bail at any level, within their
25 discretion. Kitsap County has no actual written policy governing the setting of bail, and there are
26 no criteria or factors that deputies are required to consider in doing so, including but not limited
27 to the severity of the crime alleged and a defendant's ability to pay. It is simply a long-standing

1 accepted practice or custom to allow and authorize deputies to set bail at any level they wish.
 2 This de facto policy is arbitrary and results in a substantial number of cases in which bail is set
 3 excessively and unconstitutionally high, as it was in this case - twice.

4 4.36 Defendant Gary Simpson, the elected Sheriff, is the policymaker for purposes of
 5 policies related to bail setting.

6 4.37 Deputy Trout set bail at \$50,000, which is excessively high, and did so in
 7 retaliation for Mr. Hordon's First Amendment-protected comments, including that he (Deputy
 8 Trout) would be the one "in trouble." Mr. Hordon could not afford to pay \$5,000 for a bond so
 9 that he could be released. So he spent the night in jail.

10 4.38 The next day, on July 5, 2019, Mr. Hordon was arraigned. The Kitsap County
 11 Deputy Prosecuting Attorney went even farther than the Criminal Trespass Warning and asked
 12 the Court to exclude Mr. Hordon from *all Port property* (not just Mike Wallace Park) as a
 13 condition of release, but the District Court Judge denied that request.

14 4.39 The Criminal Trespass Warning does not state that the owner of the property, the
 15 Port of Kingston, had excluded Mr. Hordon from the property, though that was Officer Merrill's
 16 justification for arresting Mr. Hordon. And although the stated reasons for the Criminal Trespass
 17 Warning were public intoxication, disturbing the peace, and threatening Port of Kingston
 18 employees, these were not the Port's reasons for calling the police to have Mr. Hordon removed,
 19 and are therefore mere pretext. The sole reason for calling the police and having Mr. Hordon
 20 removed from the public park was his display of signs that had not been approved by the
 21 Harbormaster, and of which he disapproved.

22 4.40 The Criminal Trespass Warning warned that if Mr. Hordon should ever return to
 23 Mike Wallace Park at any time "for the time period listed above" (which was "FOREVER"), the
 24 police could arrest him and he would be prosecuted for "Trespass 1 RCW 9A.52.070 (gross
 25 misdemeanor) or Trespass 2 RCW 9A.52.080 (misdemeanor)."

26 4.41 The Criminal Trespass Warning is a standard Kitsap County form created under
 27 the authority of, and pursuant to the official policies of, Kitsap County and its Sheriff's Office.

1 The Kitsap County Sheriff's Office sent a copy of the Criminal Trespass Warning in this case to
 2 the Kitsap County Prosecuting Attorney's office, which received it on July 6, 2019.

3 4.42 The Criminal Trespass Warning form does not provide any information about or
 4 right to an appeal. Police can simply order a person removed and banned from a particular
 5 place—in this case a public park—for all eternity and that person has no ability to challenge that
 6 police order.

7 4.43 Even though the stated reasons for an exclusion order can be crimes (here, “public
 8 intoxication” and “disturbing the peace”), the police issue these orders before initiation of a
 9 criminal prosecution and without a criminal conviction.

10 4.44 Kitsap County's Criminal Trespass Warnings are entirely extra-judicial. No
 11 judicial officer ever reviews them to see if they are factually accurate or legally justified.

12 4.45 Because Kitsap County's Criminal Trespass Warnings banning people from
 13 places, including public parks, are issued prior to criminal conviction, without any opportunity to
 14 challenge or appeal them, and without approval or oversight by any court, Kitsap County's entire
 15 Criminal Trespass Warning system is unconstitutional and on its face violates the Fourteenth
 16 Amendment's guarantees of due process of law.

17 4.46 To this day, Mr. Hordon is excluded from Mike Wallace Park under fear and
 18 penalty of arrest and prosecution. This constitutes an ongoing constitutional violation and harm
 19 for which Mr. Hordon has no adequate remedy at law, and he is and will continue to be
 20 prevented from entering that public park, let alone from engaging in the First Amendment-
 21 protected free speech activities for which he was banned.

22 4.47 Mr. Hordon's fear of arrest and prosecution are well-founded. Two weeks later,
 23 on July 18, 2019, Mr. Hordon returned to Mike Wallace Park with his criminal defense attorney
 24 to prepare his defense. The Port's Marina Lead called 9-1-1 to report a criminal trespass based
 25 on the Criminal Trespass Warning. Defendant Deputy Teets responded and spoke with Port
 26 officials, who confirmed that they did not want Mr. Hordon in Mike Wallace Park and wanted
 27 him arrested based on the Criminal Trespass Warning. But by the time Deputy Teets arrived,

1 Mr. Hordon and his lawyer had left.

2 4.48 In his report from July 18, 2019, Deputy Teets stated: “I reviewed a prior arrest of
 3 HORDON in ILeads dated 7/4/19 for obstruction and observed that HORDON was served with a
 4 trespass warning for the Port of Kingston at the jail after his arrest on 7/4/19,” showing that he
 5 knew the basis for the underlying arrest for failure to remove signs from the public park.

6 4.49 Three days later, on July 21, 2019, Mr. Hordon returned to Mike Wallace Park to
 7 take some pictures for purposes of preparing his criminal defense. Again, the Marina Lead
 8 called 9-1-1, and again Deputy Teets responded to the park, this time with Defendant Deputy
 9 Justin Childs. By the time they arrived, Mr. Hordon had left the park. But Deputy Teets and
 10 Deputy Childs found him a few blocks away and arrested him for “criminal trespass,” assisted by
 11 Defendant Deputy Timothy Young. The Deputies’ sole ground for arresting Mr. Hordon was the
 12 prior Criminal Trespass Warning issued by Deputy Trout on July 4, 2019, which had been
 13 initiated and motivated by a desire to prohibit Mr. Hordon from engaging in free speech
 14 activities.

15 4.50 Deputy Teets’ report from July 21, 2019 states:

16 Hordon was last seen in his distinctive blue van by the gazebo at the Port. Goff
 17 stated he saw Hordon pull his van in right by the Port stage and offload some
 18 signs on the walkway where he was arrested on 7/4/2019. Hordon had two small
 19 signs and one large banner. He stayed approximately 10-15 minutes in that area,
 and was alone. Hordon left one sign behind. Goff said he would provide footage
 from the Port security cameras when it was available.

20 This report shows that Mr. Hordon and his “distinctive blue van” were familiar to Deputy Teets.
 21 On information and belief, and supported by reasonable inference from the known facts, Deputy
 22 Teets knew the reason for the prior arrest and exclusion from the public park, that Mr. Hordon
 23 was excluded for failing to stop engaging in free speech activities in a public park, as did
 24 Deputies Child and Young.

25 4.51 Deputies Teets, Child, and Young arrested Mr. Hordon pursuant to an
 26 unconstitutional “Criminal Trespass Warning” system created and maintained by Kitsap County
 27 and its Sheriff’s Office. Because the Trespass Warning was itself invalid, and because Port

1 officials had unlawfully and unconstitutionally excluded Mr. Hordon from the public park, there
 2 was no probable cause to arrest Mr. Hordon for “trespass.”

3 4.52 These facts serve to underscore the unconstitutional nature of the Criminal
 4 Trespass Warning system. The lack of opportunity to appeal or challenge the original exclusion
 5 order, in violation of the Due Process clause of the Fourteenth Amendment, led directly to and
 6 proximately caused the second unconstitutional arrest.

7 4.53 Deputy Teets booked Mr. Hordon into the Kitsap County Jail on two counts of
 8 trespass in the second degree, and set bail at \$10,000. This amount was excessively and
 9 unconstitutionally high. Mr. Hordon could not afford to pay \$1,000 for a bond to be released.

10 4.54 For the second time in his life, Mr. Hordon spent a night in jail. The experience
 11 was unpleasant, and Mr. Hordon suffered emotional trauma and distress from the experience.

12 4.55 Kitsap County then prosecuted Mr. Hordon for two counts of criminal trespass.
 13 Mr. Hordon incurred legal fees in preparing his defense.

14 4.56 On November 26, 2019, Mr. Hordon delivered a letter to Sheriff Gary Simpson,
 15 the elected Sheriff and a policymaker for the Sheriff’s office and Kitsap County with respect to
 16 the “Criminal Trespass Warning” policy and program. Mr. Hordon explained that the Criminal
 17 Trespass Warning was violating his rights to access public property, and asked Kitsap County
 18 not to arrest him when accessing these areas.

19 4.57 On December 2, 2019, Defendant Kitsap County Sheriff Gary Simpson responded
 20 in a letter, stating:

21 The Port of Kingston has lawfully restricted your access to Port property, property
 22 you have continued to access illegally. Therefore, deputies have the legal
 23 authority to arrest you on Port and/or State managed properties.

24 You have been lawfully trespassed from Port of Kingston properties is indicated
 25 on the Criminal Trespass Warning issued to you on July 4, 2019. You refused to
 26 sign the document issued to you and have provided me with a copy for reference.
 27 This suggests you have notice of the trespass warning yet have elected to violate
 this order by continuing to access Port property, which includes the parking lot,
 driveways through the parking lot, the Port Office and the Mike Wallace Park. . . .
 Each time you access these properties you are committing the crime of trespass.

* * *

I am ordering you to cease and desist these criminal activities or you will be subject to arrest for the criminal act of trespass upon the Port of Kingston properties.

If you have further clarification or need legal advice on this matter, I suggest you seek legal counsel.

4.58 The Sheriff's December 2, 2019 letter is a statement of policy, practice or custom of Kitsap County and is a personal endorsement of an unconstitutional exclusion order from a public park.

4.59 The Sheriff's December 2, 2019 letter constitutes ratification of the Deputies' actions, and shows that they acted pursuant to County policy, practice or custom, and that County policy, practice or custom was the moving force behind the constitutional violations by the Deputies.

4.60 In the criminal matter, Mr. Hordon's criminal defense team filed a Motion to Dismiss on Monday, January 20, 2020, arguing that the Deputies arrested Mr. Hordon on both occasions in violation of the First Amendment.

4.61 A few days later, without filing any response to the Motion, the Kitsap County Deputy Prosecuting Attorney voluntarily dismissed the case without prejudice. Because the dismissal was without prejudice, Kitsap County could decide to prosecute Mr. Hordon for those same charges any time during the applicable statute of limitations. So not only was Mr. Hordon banned from Mike Wallace Park “FOREVER” on fear and penalty of arrest, he lives in fear of being prosecuted any day, at the whim of the Kitsap County Prosecuting Attorney.

V. INJUNCTION ALLEGATIONS

5.1 Kitsap County's "Criminal Trespass Warning" policy and program empowers individual Sheriff's Deputies the power to exclude any person from any place or property, including public parks, for any length of time, including "FOREVER," for any stated reason, including alleged criminal activity. These bans are carried out without any judicial oversight or

1 approval. The Warning form itself does not provide notice to the excluded person of any right or
 2 procedure to appeal the exclusion order, and no appellate or review process in fact exists. As
 3 such, Kitsap County's "Criminal Trespass Warning" policy and program violate the Fourteenth
 4 Amendment's guarantee of due process of law, both substantively and procedurally.

5.2 Mr. Hordon seeks an order enjoining enforcement of the Criminal Trespass
 6 Warning issued by Deputy Trout that purports to exclude him from Mike Wallace Park in
 7 Kingston, Washington. Because the policy and program is also procedurally unconstitutional in
 8 every case because of its failure to provide any mechanism of appeal or opportunity to be heard,
 9 Mr. Hordon also seeks an order mandating removal or amendment of Kitsap County's Criminal
 10 Trespass Warning policy and program.

11 **VI. CLAIMS**

12 **FIRST CAUSE OF ACTION**

13 **VIOLATIONS OF THE FIRST AMENDMENT**

14 6.1 This cause of action is brought against all Defendants. The facts alleged above
 15 constitute violations of Mr. Hordon's First Amendment Right to free speech. This cause of
 16 action is brought under 42 U.S.C. Section 1983 and the First Amendment to the United States
 17 Constitution. Among other things, this claim specifically includes Deputy Trout's retaliation
 18 against Mr. Hordon for speech through the setting of an excessively high bail.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATIONS OF THE FOURTH AMENDMENT**

21 6.2 This cause of action is brought against all seven individual Sheriff's Deputy
 22 Defendants, as well as Kitsap County and its Sheriff's Office. Each of the individual defendants
 23 were involved in and failed to prevent the unlawful and unconstitutional arrest of Mr. Hordon
 24 without probable cause to believe he had committed any crime. The arrests were performed
 25 pursuant to Kitsap County official policy as demonstrated by the Sheriff's letter ratifying the
 26 officers' conduct and warning Plaintiff not to enter Port property, including Mike Wallace Park,
 27 upon penalty of arrest and prosecution. The facts alleged above constitute violations of Mr.

1 Hordon's Fourth Amendment Right to be free from unreasonable seizure without a warrant
 2 supported by probable cause. This cause of action is brought under 42 U.S.C. Section 1983 and
 3 the Fourth Amendment to the United States Constitution.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATIONS OF THE FOURTEENTH AMENDMENT – PROCEDURAL DUE**
 6 **PROCESS**

7 6.3 This cause of action is brought only against Defendant Kitsap County and Sheriff
 8 Gary Simpson in his official capacity for their unconstitutional "Criminal Trespass Warning"
 9 policy and program. The facts alleged above constitute violations of Mr. Hordon's Fourteenth
 10 Amendment Right due process of law prior to deprivation of liberty and property. Indeed,
 11 Kitsap County violates the due process rights of any person subjected to its Criminal Trespass
 12 Warning policy and program. This cause of action is brought under 42 U.S.C. Section 1983 and
 13 the Fourteenth Amendment to the United States Constitution.

14 **FOURTH CAUSE OF ACTION**

15 **VIOLATIONS OF THE EIGHTH AND FOURTEENTH AMENDMENTS –**
 16 **EXCESSIVE BAIL**

17 6.4 This cause of action is brought against Defendant Kitsap County and Sheriff Gary
 18 Simpson in his official capacity for their unconstitutional bail-setting policy, custom and
 19 practice, and against Deputies Trout and Teets for setting Mr. Hordon's bail excessively high
 20 upon booking him into jail. The facts alleged above constitute violations of Mr. Hordon's Eighth
 21 and Fourteenth Amendment rights to be free from excessive bail. Indeed, Kitsap County violates
 22 the Eighth and Fourteenth Amendment rights of many persons subjected to its bail-setting policy,
 23 custom and practice. This cause of action is brought under 42 U.S.C. Section 1983 and the
 24 Eighth and Fourteenth Amendments to the United States Constitution.

FIFTH CAUSE OF ACTION

VIOLATIONS OF THE FOURTEENTH AMENDMENT – DUE PROCESS AND EQUAL PROTECTION IN BAIL SETTING

6.5 Kitsap County authorizes its deputies to set bail at any level, and this decision is completely within their discretion. Kitsap County has no actual written policy governing the setting of bail, and there are no criteria or factors that deputies are required to consider in doing so, including but not limited to the crime alleged and the defendant's ability to pay. It is simply a long-standing accepted practice or custom to allow and authorize deputies to set bail at any level they wish. This lack of standards constitutes arbitrary and capricious government action and is a violation of substantive and procedural due process.

6.6 Defendants Kitsap County and Sheriff Gary Simpson also unconstitutionally set money bail without meaningful considerations of other alternatives or taking into account the individual's ability to pay. By setting an arbitrary monetary bail amount, Defendants discriminate against those unable to pay the amount while providing a substantial benefit to individuals who have the capacity to pay in violation of the Fourteenth Amendment Equal Protection clause.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests relief against Defendants as follows:

7.1 Prospective and Mandatory Injunctive relief ordering Kitsap County to remove the “Criminal Trespass Warning” against Mr. Hordon and enjoining the County and its agents from enforcing that Trespass Warning by arresting Plaintiff should he choose to enter the public park known as “Mike Wallace Park.”

7.2 Prospective and Mandatory Injunctive relief ordering Kitsap County to amend its “Criminal Trespass Warning” policy and form to provide procedural due process protections to anyone subjected to this policy, including but not limited to notice and opportunity to be heard regarding the legality and propriety of any police exclusion order, and to comply with the requirements of the Fourteenth Amendment to the United States Constitution.

7.3 A Declaration that Kitsap County's practice for setting bail violates the Eighth Amendment, Due Process and Equal Protection Clauses of the Fourteenth Amendment, that Deputies Trout and Teets set Mr. Hordon's bail excessively high, and that these officers, along with Kitsap County and its policymaker, Sheriff Simpson, are liable for these constitutional violations.

7.4 Compensatory damages for violations of Plaintiff's Constitutional rights.

7.5 Compensatory damages for emotional distress and mental harm, including but not limited to dignitary and reputational harm caused by the arrest and incarceration for two nights in jail for the first time in Plaintiff's life.

7.6 Punitive damages from the individual Defendants on Plaintiff's claims under 42 U.S.C. §1983.

7.7 Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and to the extent otherwise permitted by law.

7.8 Leave to amend the pleadings to confirm to the evidence at trial; and

7.9 Such other relief as may be just and equitable.

DATED this 1st day of March, 2021.

MacDONALD HOAGUE & BAYLESS



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